IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.152 OF 2007

Mahadeo Pandurang Kadam & Ors. ...Applicants.
V/s.
The State of Maharashtra ...Respondent.

Shri Sanjeev P.Kadam, adv. for the Applicants.
Shri U.V.Nikam, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 8th February, 2007.

P.C.:

1. Heard Mr.Kadam, the learned counsel for the applicant and Mr.Nikam, the learned APP for the State. The learned APP is assisted by Ms.Manisha Shekhar, counsel for the intervenor, who is the original complainant.

2. The applicants seek anticipatory bail in Crime No.64 of 2006 registered at Shirala Police Station, District Sangli for the offences punishable under Sections 365, 323, 504, 506 of the I.P.C. read with Sections 3 (1) (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act, in brief).

3. The FIR was registered on the basis of report lodged by one Sunil Yashwant Kamble on 21-12-2006. The

FIR reveals that the complainant was in service of applicant no.1 as a driver on a truck. Some accident had been taken place with that truck and applicant no.1 was insisting the complainant to pay the compensation as also expenditure on repairs of the truck and an amount of Rs.1500/- which he had paid for obtaining his licence. For this purpose, his signatures were obtained on two blank cheques. He further contends that on 1-12-2006 he did not go to work in the field of applicant no.1, Mahadeo. On 2-12-2006 at about 8.30 p.m., applicant nos.4 Pratap and no.5 Nawshad, who are employees of applicant no.1, came to his house and called him. As soon as he came out, he found that one Bolero car was standing outside and applicant nos.1, 2 and 3 were also in the said car. All the applicants began to beat him and forcibly made him to sit in the car. He was taken to farmhouse of applicant no.1 and there again he was beaten and was asked to come on duty in the field. Saying so, they called him ’Mahardya’ and asked him not to tell anybody about the incident. After giving these threats, the applicants went away and the complainant also returned to his house.

4. It appears that only because he was made to sit in Bolero car and was taken in the farmhouse where he was beaten, charge of abduction under Section 365 has

been levelled against him. Section 365 provides that whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.

5. The learned counsel for the applicants contends that if the F.I.R. is carefully read, requisite intent to invoke section 365 of the I.P.C. is missing. The learned counsel for the applicants also pointed out that in the F.I.R. neither the complainant has disclosed that he belongs to Scheduled Castes or Scheduled Tribes nor he has stated that any of the accused do not belong to Scheduled Castes or Scheduled Tribes. The learned counsel has placed reliance upon number of authorities in support of his contention that if in the F.I.R. the complainant does not disclose his caste and also does not disclose the caste of the accused persons and there is no material to show that the complainant belongs to Scheduled Castes or Scheduled Tribes and that the accused persons do not belong to Scheduled Castes or Scheduled Tribes, provisions of Atrocities Act can not be invoked and the offence can not be registered. In similar case in **Ramchandra Govindrao Watkar v. State of Maharashtra 1995(2) Mh.L.J. 669**, it was held that when

no offence under the Atrocities Act is disclosed , application under Section 438 may be tenable.

6. In view of the facts of the present case, it is clear that in the F.I.R. neither the complainant has specifically disclosed that he belongs to Scheduled Caste nor he has stated that accused persons do not belong to scheduled castes or scheduled tribes. Further even if he has made allegation that he was called as 'Mahardya' ,he has not specifically stated, out of 5 accused persons, who had uttered that word. It is not necessary to go into the merits of the case at this stage. But from the contents of the F.I.R., it appears that provisions of Atrocities Act may not be applicable. Similarly, requisite intent to invoke Section 365 also appears to be absent. If the F.I.R. is carefully seen, though the incident had occurred on 2-12-2006, the F.I.R. is actually lodged on 21-12-2006. In such circumstances, in my opinion, anticipatory bail may be granted to the present applicants.

7. In the case of arrest in Crime No.64 of 2006 registered by Shirala Police Station, the applicants shall be released on their executing P.R.Bond of Rs.5,000/- with surety in like amount with condition that they shall make themselves available as and when

required for the purpose of investigation and they shall fully co-operate in the investigation. If after investigation charge-sheet is filed, they shall appear before the competent Court and seek bail.

(J.H.Bhatia,J.)